

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KEVIN MICHAEL LONG,

Plaintiff,

v.

STANISLAUS COUNTY SHERIFF'S  
DETENTION CENTER, et al.,

Defendants.

Case No. 1:23-cv-00356-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED, WITHOUT PREJUDICE,  
BECAUSE OF PLAINTIFF'S FAILURE TO  
COMPLY WITH COURT ORDERS AND  
PROSECUTE THIS CASE

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS

ORDER DIRECTING THE CLERK'S  
OFFICE TO ASSIGN A DISTRICT JUDGE

Plaintiff Kevin Long is proceeding *pro se* in this civil rights action. On March 6, 2023, Plaintiff initiated this action by filing his complaint. (ECF No. 1). Plaintiff also submitted an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2). The case was subsequently transferred from the Sacramento Division. (ECF No. 4). On March 9, 2023, the Court issued an order requiring Plaintiff to refile a completed application or to pay the filing fee, within forty-five days. (ECF No. 6). Because Plaintiff's application indicated that he was detained at the Public Safety Center, the Court also direct Plaintiff to file a notice with the Court regarding his detention status. (*Id.*) The Court also warned Plaintiff that failure to comply may result in a recommendation for the dismissal of this action. (*Id.* at p. 2). The Court's order was returned as undeliverable.

Plaintiff's deadline to submit a notice regarding his detention status and a new application to proceed *in forma pauperis* or to pay the filing fee has passed. Plaintiff has not

1 filed such a notice nor has Plaintiff submitted a completed application or paid the requisite  
2 filing fee. Accordingly, Plaintiff failed to comply with the Court's March 9, 2023 order.  
3 Therefore, the Court will recommend that this case be dismissed, without prejudice, because of  
4 Plaintiff's failure to prosecute this case.

5 "In determining whether to dismiss a[n] [action] for failure to prosecute or failure to  
6 comply with a court order, the Court must weigh the following factors: (1) the public's interest  
7 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
8 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
9 public policy favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d  
10 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

11 "The public's interest in expeditious resolution of litigation always favors dismissal."  
12 *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,  
13 this factor weighs in favor of dismissal.

14 As to the Court's need to manage its docket, "[t]he trial judge is in the best position to  
15 determine whether the delay in a particular case interferes with docket management and the  
16 public interest.... It is incumbent upon the Court to manage its docket without being subject to  
17 routine noncompliance of litigants...." *Id.* Plaintiff has failed to file a completed *in forma*  
18 *pauperis* application, or otherwise pay the filing fee. This failure is delaying this case and  
19 interfering with docket management. Therefore, the second factor weighs in favor of dismissal.

20 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in  
21 and of itself to warrant dismissal." *Id.* (citing *Yourish*, 191 F.3d at 991). However, "delay  
22 inherently increases the risk that witnesses' memories will fade and evidence will become  
23 stale," *id.* at 643, and it is Plaintiff's failure to inform the Court of his detention status or submit  
24 a completed *in forma pauperis* application, or otherwise pay the filing fee that is causing delay  
25 and preventing this case from progressing. The Court is unable to proceed unless Plaintiff is  
26 granted *in forma pauperis* status or pays the filing fee. Therefore, the third factor weighs in  
27 favor of dismissal.

28 As for the availability of lesser sanctions, given that Plaintiff has stopped prosecuting

1 this case, despite being warned of possible dismissal, there is little available to the Court which  
2 would constitute a satisfactory lesser sanction while protecting the Court from further  
3 unnecessary expenditure of its scarce resources. Considering Plaintiff's previous *in forma*  
4 *pauperis* application, it appears that monetary sanctions are of little use. And as Plaintiff has  
5 stopped prosecuting this case, excluding evidence would be a meaningless sanction.

6 Additionally, because the dismissal being considered in this case is without prejudice, the Court  
7 is stopping short of using the harshest possible sanction of dismissal with prejudice.

8 Finally, because public policy favors disposition on the merits, this factor weighs  
9 against dismissal. *Id.*

10 After weighing the factors, the Court finds that dismissal without prejudice is  
11 appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

- 12 1. This case be dismissed, without prejudice, because of Plaintiff's failure to  
13 prosecute this case; and
- 14 2. The Clerk of Court be directed to close this case.

15 These findings and recommendations will be submitted to the United States district  
16 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
17 fourteen (14) days after being served with these findings and recommendations, Plaintiff may  
18 file written objections with the Court. The document should be captioned "Objections to  
19 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
20 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*  
21 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394  
22 (9th Cir. 1991)).

23 Additionally, IT IS ORDERED that the Clerk's Office assign a district judge to this  
24 case.  
25 IT IS SO ORDERED.

26 Dated: July 11, 2023

27 /s/ Eric P. Grogan  
28 UNITED STATES MAGISTRATE JUDGE